

**In re: STEW LEONARD'S.
98 AMA Docket No. M 1-1.
Order Granting Petitioner's Motion To Withdraw Motion To Stay filed
May 1, 2000.**

Donald A. Tracy, for Respondent.
James A. Wade and Brian O'Donnell, Hartford, CT, for Petitioner.
Sydney Berde, St. Paul, MN, for Agri-Mark, Inc.
John H. Vetne, Newburyport, MA, for New England Dairies, Inc.
Order issued by William G. Jenson, Judicial Officer.

On March 16, 2000, I issued a Decision and Order: (1) concluding the Market Administrator's determination that Stew Leonard's [hereinafter Petitioner] is not a "producer-handler" as defined in section 1001.10 of the federal order regulating the handling of milk in the New England Marketing Area (7 C.F.R. § 1001.10), is in accordance with law; and (2) dismissing Petitioner's Amended Petition in which Petitioner requested that the Secretary of Agriculture designate Petitioner as a producer-handler. *In re Stew Leonard's*, 59 Agric. Dec. ____, slip op. at 3, 62-63 (Mar. 16, 2000).

On April 10, 2000, Petitioner filed Petitioner's Motion To Stay, which states in its entirety:

The petitioner in the above-captioned case, Stew Leonard's, hereby respectfully requests that the Secretary stay enforcement of its March 16, 2000 Decision And Order. As support for this motion, the petitioner states that it has this day filed a Petition For Review with the United States District Court for the District of Connecticut pursuant to 7 U.S.C. 608c(15)(B).

On April 18, 2000, Petitioner filed Withdrawal of Petitioner's Motion To Stay, requesting leave to withdraw Petitioner's Motion To Stay. On May 1, 2000, Donald A. Tracy, counsel for the Administrator, Agricultural Marketing Service, United States Department of Agriculture [hereinafter Respondent], orally informed the Judicial Officer that Respondent would not be filing a response to Petitioner's Withdrawal of Petitioner's Motion To Stay. On May 1, 2000, the Hearing Clerk transmitted the record of this proceeding to the Judicial Officer for a ruling on Petitioner's Withdrawal of Petitioner's Motion To Stay.

A party does not have the power to withdraw a motion filed with the Hearing Clerk as a matter of right.¹ However, based upon a careful consideration of the record, I find no reason to deny Petitioner's Withdrawal of Petitioner's Motion To

¹See generally *In re Apex Meat Co., Inc.*, 46 Agric. Dec. 14, 16-17 (1987) (stating that, under the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes, a party does not have the right to withdraw a motion filed with the Hearing Clerk).

Stay.

For the foregoing reason, Petitioner's Withdrawal of Petitioner's Motion To Stay is granted.
